Petition

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81-633

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1981

No. _____

MARTIN BASS, ROBERT ALLEN ET AL.,
Petitioners

vs.

UNITED STATES OF AMERICA AND
THE FEDERAL BUREAU OF INVESTIGATION,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTION PRESENTED

1. Did the District Court err in holding that defendants below were entitled to a defense or qualified immunity of good faith and reasonable belief in the validity of the arrest and/or search where defendants conducted a search for the subjects

of an arrest warrant in the home of a third party without first obtaining a search warrant.

PARTIES TO PROCEEDING

The parties to the proceeding in the United States District Court were MARTIN BASS, ROBERT ALLEN, JACKQUELINE E. ALLEN and OLA M. ALLEN, petitioners herein and THE UNITED STATES OF AMERICA and THE FEDERAL BUREAU OF INVESTIGATION both represented by Mr. Denver L. Rampey, Jr., United States Attorney for the Middle District of Georgia.

OPINIONS BELOW

The opinion of the District Court and the Court of Appeals are unreported and are set forth in the Appendix, infra, p. 14.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was made and entered

on June 30, 1981 and copies thereof are appended to this petition in the Appendix. The jurisdiction of this Court is invoked under 28 U.S.C.A. 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES

This case involves the Fourth Amendment to the Constitution of the United States and The Federal Torts Claims Act, 28 U.S.C.A. 2671, et seq.

STATEMENT

This action for damages under the Federal Torts Claims Act, 28 U.S.C.A. 2671, et seq. arose out of an FBI investigation which resulted in a mistaken raid of the plaintiffs' house in Macon, Georgia during April of 1976.

The evidence shows that on or about April 14, 1976, agents of the defendant, FEDERAL BUREAU OF INVESTIGATION, received a teletype report in its Atlanta office

which indicated that an informant of the defendant FBI'S Savannah office had indicated that certain individuals being sought by the defendant FBI were involved in narcotics traffic in the Macon, Georgia area. None of the plaintiffs in this lawsuit were in anyway connected with or identified by the information contained in the teletype received on or about April 14, 1976. The individuals being sought were believed to be driving either a late model white over blue Oldsmobile Cutless or Chevrolet Monte Carlo.

Upon receipt of this information, the defendants' agents, GEORGE T. KENNY and ROBERT WOLFKILL of the defendant's Macon FBI office began to search in the Macon area for the individuals, namely one RALPH CANADAY and STEPHEN PARKER. As a part of this search, agents KENNY AND WOLFKILL contacted JERRY MODENA and JIM BENNETT

of the Bibb County Sheriff's Department. MR. BENNETT provided an informant who was questioned regarding his knowledge of the individuals being sought. None of the defendant's agents knew the informant or had any prior knowledge of his reliability.

Several days later, the informant met again with defendant's agents and informed them that a person believed to be involved in narcotics traffic and who drove a white over blue Monte Carlo was located at 2059 Canton Street in Macon, Georgia. The defendant's agents relying solely on this information, went to the plaintiff's residence of 2059 Canton Street at or near 10:00 a.m. to begin observations. The residence was under constant observation until 3:00 p.m., when the defendant agents, assisted by the Bibb County Sheriff's Office ordered all residents out of the house, and then searched the entire house. None of the

parties sought were found to be located in the residence and none of the persons therein, plaintiff MARTIN BASS, ROBERT ALLEN, JACKQUELINE ALLEN or OLA ALLEN had any knowledge of or connection with the parties sought by the defendants.

At the time of the raid, the plaintiffs were quietly enjoying their dinner and had done nothing to in any way connect them with the persons being sought by the defendants. The defendants made no attempt to obtain a warrant of any kind prior to going to the plaintiffs' home at 2059 Canton Street, eventhough they had over five hours prior to the raid in which to do so. Further, the defendant's agents conducted a search of the residence without the consent of the residents of 2059 Canton Street.

The evidence shows that once the plaintiffs were outside of their house, they were ordered, at gun point, to move to an

area under police control. A search of their persons was conducted and plaintiff BASS was handcuffed and forced to lie in the street. Plaintiff BASS was kicked and verbally abused. As a result of the defendants' conduct, plaintiff suffered great humiliation and embarrassment. That all of the events at 2059 Canton Street were witnessed by a crowd of persons, some of whom were friends and neighbors of the plaintiffs. That the plaintiffs' good names and reputations were damaged as a result of the defendant's conduct.

EXISTENCE OF JURISDICTION BELOW

The District Court of the Middle District of Georgia had jurisdiction over these federal tort claims under 28 U.S.C. A. 1346(b).

ARGUMENT

The decision below should be reviewed

because it erroneously held that the defendants below were entitled to a defense or qualified immunity of good faith and reasonable belief in the validity of their actions where the defendant's agents and employees conducted a search for the subjects of an arrest warrant in the home of a third party without first obtaining a search warrant. The search at issue here took place in the absence of consent or exigent circumstances. Further, the decision appears to conflict with this Court's decision in Steagald v. United States, - U.S. -, 68 L.Ed 2d 38 (April 21, 1981). This Court should grant review.

This Court has consistently held that absent consent or exigent circumstances the entry into a home to conduct a search or make an arrest is unreasonable under the Fourth Amendment unless done pursuant to a warrant. Payton v. New York, 445 U.S. 573

(1980); Johnson v. United States, 333 U.S. 10, 13-15 (1948). The search complained of herein was claimed by the defendants to have been based upon arrest warrants. As this Court recently held in Steagald:

> "While an arrest warrant and a search warrant both serve to subject the probable cause determination of the police to judicial review, the interest protected by the two warrants differ. An arrest warrant is issued by a magistrate upon a showing that probable cause exist to believe that the subject of the warrant has committed an offense and this warrant primarily serves to protect an individual from an unreasonable seizure. A search warrant in contrast, is issued upon a showing of probable cause to believe that the legitimate object of a search is located in a particular place, and therefore safeguards an individual's interest in the privacy of his home and possessions against the unjustified intrusion of the police".

In this action the defendants' employees and agents sought not merely to conduct an arrest of the persons who were the subjects of an arrest warrant in a public place or in their homes, instead,

they relied on the arrest warrants as legal authority to enter the home of a third person based on their belief that the parties sought might be guest there. As this court in Steagald noted, regardless of how reasonable this belief might have been, it was never subjected to the detached scrutiny of a judicial officer. Thus the use of an arrest warrant to conduct the search complained of did absolutely nothing to protect petitioners privacy interest in being free from an unreasonable invasion and search of their home. The petitioners only protection from an illegal entry and search was the defendants agents personal determination of probable cause. Such judicially untested determinations are not reliable enough to justify an entry into a person's home to arrest him without a warrant, or a search of a home for objects in the absence of a search warrant.

Steagald v. United States, supra; Payton v. New York, supra; Johnson v. United States, supra.

The Court of Appeals below held that exigent circumstances were present here at the time of search, even though the District Court, in its opinion, makes no such finding in its opinion. The record in this matter shows that the officers were not in "Hot Pursuit" of the fugitives. Additionally, the home of the petitioners was under observation by the defendants for over five hours prior to the raid. Thus as this Court pointed out in Steagald, the subject of the arrest warrant could have been readily seized before entering or after leaving the home of the petitioners, if they had been there. Moreover, the defendants here made no attempt to obtain a search warrant. Instead they organized a raiding party which included members of

the local sheriff's SWAT team. In routine search cases, the short time required to obtain a search warrant from a magistrate will seldom hinder efforts to apprehend a felon. In Macon, where the raid was planned, a U.S. District Judge was available, but even if he was not, a magistrate was available in person or by telephone. See Fed. Rule Crim. Proc. 41(c)(1)(2).

The issues raised by this case are exactly those that the court spoke to in Steagald, when it noted:

> "The addition burden imposed on the police by a warrant requirement is minimal. In contrast, the right protected - that of presumptively innocent people to be secure in their homes from unjustified, forcible intrusions by the Government - is weighty".

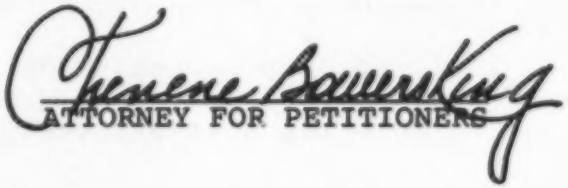
The questions presented by this case are of great and recurring significance in the administration of the Tort Claims Act. The granting of a Writ of Certiorari would help insure that the Fourth Amend-

ment continues not only to redress unlawful police action but prevents such action as well.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a Writ of Certiorari should be granted.

Respectfully Submitted,



ATTORNEY FOR PETITIONERS

APPENDIX A.

ORIGINAL OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PER CURIAM.

Plaintiffs appeal the dismissal of their action for damages against the Federal Bureau of Investigation and the United States under the Federal Torts Claims Act, 28 U.S.C.A. 2671, et seq. After a careful review of the record, we find ourselves in agreement with the district court and adopt their opinion, appended hereto, as our own.

We note, however, that since the district court's opinion the Supreme Court has held that it violates the fourth amendment if law enforcement officers search for the subject of an arrest warrant in the home of a third party without first obtaining a search warrant. Steagald v. United States, 49 U.S.L.W. 4418 (April 12, 1981). This recent development does not alter our outcome for two reasons. First, the district

court has correctly stated what a reasonable man would fairly believe was the law at the time of the alleged tort. This standard, not some clairvoyant anticipation of Supreme Court decisions, is the measure by which we must judge the police officers' good faith. Second, Steagald explicitly provides that a third party's home may be searched for the subject of an arrest warrant if exigent circumstances are present. Our review of the record and the district court's opinion indicated that exigent circumstances were present here at the time of the search.

AFFIRMED.

APPENDIX B.

OPINION OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA, MACON DIVISION

OWENS, District Judge:

A non-jury trial was held on this matter in Macon, Georgia on October 10, 1979 at the conclusion of which this court entered a summary order in favor of the defendants. Plaintiffs have requested the court to make formal findings of fact and conclusions of law pursuant to Rule 52(a), Fed. R. Civ. P.

Findings of Fact

This action for damages under the Federal Tort Claims Act, 28 U.S.C.A 2671, et seq. arose out of an FBI investigation which resulted in a mistaken raid of plaintiffs' house in Macon. Plaintiffs allege that the raid and search of the house were done without probable cause and in an unlaw-

ful manner, and that due to the incident they suffered humiliation and damage to their reputations.

In April 1976, Special Agent George Kenney, a member of the Atlanta FBI fugitive squad, was in Macon. He had with him at that time fugitive alerts and arrest warrants for Ralph Canaday, Stephen Parker, William Allen, and Charles Lee Herron. All four men were murderers and were described as extremely dangerous. On April 14th, Agent Kenny received a teletype out of the Savannah FBI office that a confidential informant had reported that he knew Canaday and Parker to be involved with a person whom the informant believed to be a drug dealer in Macon and that on a given date they had been with the dealer in Macon at a named motel in a particular room. The informant also indicated that one of the fugitives was driving a late model white-over-blue

Oldsmobile Cutlass or Chevrolet Monte Carlo. Agents Wolfkill and Kenny verified with the motel manager that the alleged drug dealer had stayed at the motel on the approximate dates and in the room indicated by the informant.

Through Agent Bennett of the Macon-Bibb County Drug Squad a meeting was held on April 16th or 17th between the FBI agents and an informant who could provide information on the alleged drug dealer. At this meeting with Agents Kenny and Wolfkill the informant picked from a number of photographs the picture of Canaday and Parker and stated that they resembled two men who were involved with a local drug dealer, one of whom drove a white-over-blue Monte Carlo. This informant had given Macon authorities information on four previous occasions which had resulted in arrests and convictions.

On Monday, April 19th around 10:00 a.m. Officer Bennett advised Agent Kenny that the informant had located one of the men and the white-over-blue Monte Carlo at 2509 Canton Street in Macon. Agents Kenny and Wolfkill went to the house and observed the white-over-blue Monte Carlo in the driveway along with a green Cadillac. They were unable to determine the owners of the cars through the license numbers but they did ascertain that the house belonged to a Mrs. Ola Allen. Agents Kenny and Wolfkill requested the assistance of the Bibb County SWAT unti and other FBI agents. The agents met with officers of the SWAT unit and formulated a plan to surround the house and require the occupants to come out to be identified.

The defendants and the SWAT unit arrived at the house about 3:00p.m. Agent Kenny, identifying himself as an FBI agent, ordered the occupants out of the house with a

bull horn. Two black females, Mrs. Ola Allen and Mrs. Jackie Allen, were the first to exit from the house and the agents directed them to kneel behind one of the cars so that they would be safe in the event of shooting. Mrs. Ola Allen, the ederly female, had to be urged down behind one of the cars. Mr. Martin Bass, the next person to exit the house, was very agitated and refused to follow the agents' directions to get behind the car. Bass was then handcuffed, frisked and forced to kneel on the street. The last person to exit the house was Robert Allen, and he was also frisked. Agent Kenny then compared the fingerprints of Allen and Bass with those on the fugitive alerts and determined that neither was one of the fugitives. The handcuffs were then removed fr m Mr. Bass. Agent Kenny explained that they were FBI agents and that they had reason to believe that federal fugitives were at the address. The tes-

timony of Agent Kenny, although disputed, was that Mr. Bass then gave permission for a search of the house. Three members of the SWAT team proceeded to search the house. They testified that they searched places only where a person might hide such as in closets and under beds. The search was completed in several minutes and the officers exited the house. Agent Kenny again explained the incident to the plaintiffs and told them how to contact him if they had any questions. This entire incident lasted twenty to thirty minutes. At the instigation of the plaintiffs, several stories concerning the incident appeared in the Macon newspapers. Five months after the incident, plaintiffs brought this suit against the FBI and the United States.

CONCLUSIONS OF LAW

It is well established that in damage suits alleging violations of constitutional rights, federal officers are entitled to a defense or qualified immunity of good faith and reasonable belief in the validity of the arrest or search and in the necessity for carrying out the arrest or search in the manner in which they were conducted. Norton v. United States, 581 F.2d 390 (4th Cir. 1978); Rodriguez v. Ritchey, 539 F.2d 394 (5th Cir. 1976); Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics, 456 F.2d 1339 (2d Cir. 1972). Even if misinformed as to the facts, a federal officer who acts with probable casue or in reasonable food faith as to the validity of his actions is not liable for the consequences, Norton, supra. Furthermore, in suits against the United States under the Federal Tort Claims Act alleging violations of

Fourth Amendment rights by federal agents, the United States is entitled to assert all defenses available to its agents. Norton, supra.

The court finds that the FBI agents in this case were acting in absolute good faith and with a reasonable belief that the fugitives Canaday and Parker were present at 2059 Canton Street. Agents Wolfkill and Kenny corroborated the information of the Savannah informer. The Macon informant had given reliable information to the Macon authorities on four previous occasions.[1] Agents Kenny and Wolfkill observed the Monte Carlo automobile at 2059 Canton Street and

[1]Five days before the hearing in this matter, plaintiffs sought to have the court require defendants to disclose the identity of the informers. Plaintiffs have not shown that disclosure of the informers' identities in this case is essential to a fair determination of the issues before the court. See Roviaro v. United States, 353 U.S. 53, 77 S. Ct. 623, 1 L.Ed.2d 639 (1957); Suarez v. United States, 582 F.2d 1007 (5th Cir. 1978); United States v. Alonzo, 571 F.2d 1384 (5th Cir. 1978).

attempted to discover the owner. They determined that the house belonged to Mrs. Ola Allen, whose last name was the same as one of the fugitives, William Allen, who was reported to be in the company of Canaday and Parker. The information given by the informants and the observations of the agents themselves were sufficient to give defendants probable cause to believe the fugitives were present in the house.

The court finds further that the raid and the search of the house were conducted in a manner that the agents perceived to be necessary and that was reasonable under the circumstances as they, in good faith, perceived them to be. The agents conducted the raid in a manner they believed would be least likely to endager themselves, the occupants of the house, or any persons nearby. The agents had no way of knowing when the plaintiffs walked out the door that they were not the fugitives. No unnecessary force was used

against the plaintiffs. When it was determined that neither of the men was Canaday or Parker, the plaintiffs were given a full explanation of the incident.

The search of the house by the men from the SWAT unit was also conducted in a reasonable manner. Plaintiffs contend that in the absence of a warrant the search of the house was unlawful. If the search was conducted with the consent of Bass, as Agent Kenny testified, then plaintiffs cannot complain since the search itself was conducted in a reasonable manner. Compare United States v. Watson, 423 U.S. 411, 96 S.Ct. 820, 46 L.Ed. 2d 598 (1976). Nevertheless, even in the absence of consent, it was not improper for the agents to continue into the house to see if the men for whom they were looking and for whom they had arrest warrants were infact there. "For Fourth Amendment purposes, an arrest warrant founded on probable cause

implicitly carries with it the limited authority to enter a dwelling where there is reason to believe the suspect is within," Payton v. New York, - U.S. -, 100 S.Ct. -, 63 L.Ed. 2d 639, 642 (1980).

It is regrettable that this incident occurred. However, it was obviously an unintended result on the part of the FBI agents. The agents were not abusing their authority. The facts established by the evidence demonstrate that the agents were acting with probable casue and with good faith as to the validity of their actions. The raid and search of the house were conducted in a reasonable manner under the circumstances. Under these facts and the applicable law, the defendants cannot be held liable to plaintiffs for damages.

Accordingly, the court finds in favor of the defendants.

SO ORDERED, this 5th day of August, 1980.

Wilbur D. Owens, Jr.
United States District

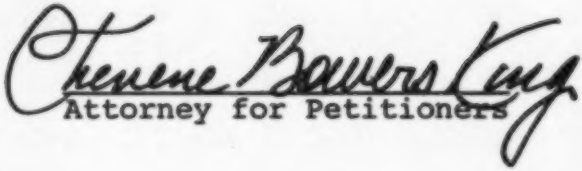
CERTIFICATE OF SERVICE

I, C. B. KING, one of the attorneys for the petitioners herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 27 day of September, 1981, I served copies of the foregoing petition for Writ of Certiorari on the several parties thereto as follows:

1. On the United States, by depositing same in the United States mail properly addressed with sufficient postage prepaid, to Mr. Denver L. Rampey, Jr., U.S. Attorney, Middle District of Georgia, P. O. Box U, Macon, Georgia and to The Solicitor General, Department of Justice, Washington, D.C. 20530.

2. On the Federal Bureau of Investigation by mailing a copy, in a duly addressed envelope, with air mail postage prepaid to

its Chief Counsel, at its offices in Washington, D.C. 20530.



Attorney for Petitioners

Opposition

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MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

REX E. LEE
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MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

Five years before this Court's decision in *Steagald* v. *United States*, No. 79-6777 (Apr. 21, 1981), local police and agents of the Federal Bureau of Investigation, armed with valid arrest warrants for escaped murderers, searched petitioners' house in Macon, Georgia, without obtaining a search warrant. Although information furnished by a previously reliable informant and circumstantial evidence had indicated that some of the fugitives were present in the house, the search was unsuccessful. Petitioners then brought suit under the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*, alleging that the search was illegal, but the district court entered judgment for the government on the ground that the FBI agents had a good faith belief in the legality of their actions. The court of appeals affirmed on that same ground and added that exigent circumstances existed at the

time of the search. Petitioners now contend, first, that the agents could not have had a good faith belief that the search was legal and, second, that exigent circumstances were not present.

1. In April 1976, FBI agents from Atlanta, Georgia, were searching for four escaped murderers (Pet. App. 17). An informant told the FBI's Savannah office that two of the fugitivies had met an alleged drug dealer in a specified motel room in Macon (*id.* at 17), and the alleged drug dealer's presence in that motel room was confirmed by the motel manager (*id.* at 18). The informant also indicated that one of the fugitives was driving a blue and white late model Chevrolet Monte Carlo or Oldsmobile Cutlass (*id.* at 17-18).

FBI agents then met with an informant who on four previous occasions had furnished the Macon police with information that resulted in arrests and convictions (Pet. App. 18). After viewing a number of photographs, the informant identified the same two fugitives as persons involved with a local drug dealer (*ibid.*). Several days later, the informant told local police that he had located the two escapees and the blue and white Monte Carlo at petitioners' house (*id.* at 19). The agents observed the car in the driveway and discovered that the house was owned by Ola Allen, whose last name was the same as that of one of the escaped murderers, Robert Allen (*id.* at 20, 24).

The agents awaited the arrival of a local police SWAT team before attempting to execute arrest warrants for the escapees (Pet. App. 19-20). At approximately 3 p.m., after the house had been surrounded, one of the agents used a bullhorn to instruct the occupants to leave the house (*ibid.*). Two women, Ola Allen and Jackie Allen, emerged first and were directed to a place out of range of any possible gunfire (*id.* at 20). The two men in the house, Martin Bass and

Robert Allen (not the fugitive sought by the FBI) left next (*ibid.*). Both were frisked and Bass was handcuffed when he refused to move out of range of any possible shooting (*ibid.*). No unnecessary force was used (*id.* at 24). After fingerprinting the two men, the agents discovered that they were not the fugitives, and the handcuffs were removed from Bass (*id.* at 20). An FBI agent explained the reason for the search and, according to the agent, Bass then consented to a search of the house (*id.* at 20-21).

Members of the SWAT team, who conducted the search, looked in only those places where a person might hide (Pet. App. 21). The search lasted several minutes and proved unsuccessful (*ibid.*). One of the agents again explained the purpose of the search and told petitioners how to contact the local FBI office if they wished to do so (*ibid.*).

2. Several months later, petitioners brought suit against the FBI and the United States in the United States District Court for the Middle *district* of Georgia. Petitioners alleged that the search was conducted without probable cause and in an unlawful manner (Pet. App. 16-17). After a non-jury trial, the district court entered judgment for the respondents. The court found that the agents had acted in good faith and with a reasonable belief that the fugitives were present in the house (Pet. App. 23). The court thus found it unnecessary to determine whether Bass had consented to the search (*id.* at 25). In addition, the court held that the search had been conducted in a reasonable manner (*id.* at 24).

The court of appeals affirmed in an unpublished per curiam decision (Pet. App. 14-15). The court of appeals adopted the district court's opinion and added that that opinion had not been undermined by this Court's subsequent decision in *Steagald* v. *United States*, No. 79-6777 (Apr. 21, 1981), holding that, except in exigent circumstances, a search warrant is needed to search a third party's

dwelling for the subjects of an arrest warrant (Pet. App. 14). The court of appeals stated that the standard by which good faith is measured is "what a reasonable man would fairly believe was the law at the time of the alleged tort" and that the agents' behavior satisfied that standard (Pet. App. 15). The court of appeals also found that "exigent circumstances" had been present, thus obviating the need for a search warrant even under the *Steagald* standard (*ibid.*).

3. The decision of the court of appeals is correct and does not conflict with any decision of this Court or of any other court of appeals. Accordingly, further review by this Court is unwarranted.

a. Petitioners contend (Pet. 8) that the decision of the court of appeals conflicts with this Court's decision in *Steagald* v. *United States, supra,* but their argument lacks merit. Federal officers sued for alleged violations of constitutional rights are immune from liability unless they "discharge[d] their duties in a way that [was] known to them to violate the United States Constitution or in a manner that they should [have known transgressed] a clearly established constitutional rule." *Butz* v. *Economou,* 438 U.S. 478, 507 (1978). In suits against the United States under the Federal Tort Claims Act alleging violations of Fourth Amendment rights by federal agents, the United States is entitled to assert all defenses available to the agents. *Norton* v. *United States,* 581 F. 2d 390 (4th Cir.), cert. denied, 439 U.S. 1003 (1978).

In the present case, the FBI agents who supervised the search of petitioners' house reasonably believed that a search warrant was not needed. The search occurred long before *Steagald* was decided. At that time, the Fifth Circuit had taken the position that law enforcement officers were permitted to search the house of a third person without first obtaining a search warrant if they had reason to believe that a person for whom they had a valid arrest warrant was

present inside. *Rodriquez* v. *Jones*, 473 F. 2d 599, 605-606, (5th Cir.), cert. denied, 412 U.S. 953 (1973). The agents were entitled to rely upon the Fifth Circuit case law and were not required to predict the outcome in *Steagald*—an outcome that the Fifth Circuit and at least two other courts of appeals were unable to foresee (see *Steagald* v. *United States, supra,* slip op. 3 n.3) and with which two members of this Court disagreed.

b. Petitioners also maintain (Pet. 8) that exigent circumstances were not present, but the court of appeals correctly reached a contrary conclusion based upon its review of the record. The agents had probable cause to believe that the fugitives were hiding in the house. The men sought were convicted murderers who were likely to flee or to resist arrest violently, and the agents reasonably believed that the fugitives were armed. If the agents had waited and the escapees had been in the house, they might have spotted the agents and formulated plans to flee or to resist any effort by the agents and police to enter the house. The escapees might have burst out of the house and caught the agents and police off guard, or they might have waited until after dark before attempting to leave. Thus, the "exigent circumstances" exception to the warrant requirement was satisfied.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

DECEMBER 1981

DOJ-1981-12